

FILED 08/02/10

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

JEFFERY G. SHARP,

Plaintiff,

Civil No. 10-6163-TC

v.

FINDINGS AND
RECOMMENDATION

SUSAN SOWERS,

Defendant.

COFFIN, Magistrate Judge.

Plaintiff's Application to proceed in forma pauperis (#5) is allowed. However, for the reasons set forth below, plaintiff's complaint should be dismissed without service of process on defendant on the ground that it fails to state a claim upon which relief can be granted.

The crux of plaintiff's complaint is that defendant, in her official capacity as a probation officer, told Ms Vargas, a probationer under her supervision, that she "could not live with plaintiff or she would be arrested." Amended Complaint

(#6), p. 4.

A complaint filed in *forma pauperis* may be dismissed before service of process if it is deemed frivolous under 28 U.S.C. §1915(d). Neitzke v. Williams, 490 U.S. 319, 324 (1989); Jackson v. State of Ariz., 885 F.2d 639, 640 (9th Cir. 1989). A complaint is frivolous "where it lacks an arguable basis in law or in fact." Neitzke, 490 U.S. at 325; Lopez v. Dept. of Health Services, 939 F.2d 881, 882 (9th Cir. 1991); Jackson, 885 F.2d at 640.

In determining whether a civil rights complaint is frivolous under § 1915(d), this court is mindful of the requirement to liberally construe the allegations of a *pro se* plaintiff and to afford the plaintiff the benefit of any doubt. Lopez, 939 F.2d at 883.

I find that regardless of how liberally plaintiff's complaint is construed, it fails to state a claim.

Plaintiff is not a lawyer and may not represent third parties in this court. His claims in this proceeding have to do with an alleged violation of Ms. Vargas' rights. Plaintiff has no standing to assert the rights of others or bring claims based on allegations of what the defendant allegedly said to another individual.

Assuming plaintiff could assert some cognizable claim based on the facts alleged in the complaint ("threats" against a third party), absolute or good faith immunity would preclude the recovery of damages that plaintiff seeks.

Plaintiff's Amended Complaint (#6) should be dismissed with prejudice. This proceeding should be dismissed.

This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of the district court's judgment or appealable order. The parties shall have fourteen (14) days from the date of service of a copy of this recommendation within which to file specific written objections with the court. Thereafter, the parties have fourteen (14) days within which to file a response to the objections. Failure to timely file objections to any factual determinations of the Magistrate Judge will be considered a waiver of a party's right to de novo consideration of the factual issues and will constitute a waiver of a party's right to appellate review of the findings of fact in an order or judgment entered pursuant to the Magistrate Judge's recommendation.

DATED this 2 day of ^{Aug}~~July~~, 2010.



Thomas M. Coffin
United States Magistrate Judge